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## SCHEDULES

### SCHEDULE 3

Section 15.

#### EXCISE DUTY: PAYMENTS BY COMMISSIONERS IN CASE OF ERROR OR DELAY

##### PART 1

##### PAYMENTS

###### *Duty paid in error*

- 1 (1) This paragraph applies if—
- (a) the first condition set out below is satisfied, and
  - (b) either the second or the third condition set out below is satisfied.
- (2) The first condition is that, due to an error on the part of the Commissioners, any of the following occurs at any time—
- (a) a person is refused authorisation for the purposes of section 8(1) or 10(1) of the Alcoholic Liquor Duties Act 1979 (c. 4);
  - (b) a person is refused a direction for the purposes of section 11(1) of that Act;
  - (c) a person is refused approval for the purposes of section 9(1) or 14(1) of the Hydrocarbon Oil Duties Act 1979 (c. 5);
  - (d) a person is refused consent for the purposes of section 10(1) of that Act.
- (3) The second condition is that on or after the commencement day a person pays to the Commissioners an amount by way of excise duty which would not have been paid but for the error.
- (4) The third condition is that on or after the commencement day the person refused pays for goods an amount which includes an amount which—
- (a) represents a payment by way of excise duty, and
  - (b) would not have been included but for the error.
- (5) If the second condition is satisfied the Commissioners may pay to the person refused an amount equal to the duty which would not have been paid.
- (6) If the third condition is satisfied the Commissioners may pay to the person refused an amount which appears to them to be equal to the payment by way of excise duty.
- (7) The person refused is the person refused an authorisation, direction, approval or consent.

###### *Error relating to rebate*

- 2 (1) This paragraph applies if the following two conditions are satisfied.

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- (2) The first condition is that a person is entitled to use rebated heavy oil in particular circumstances.
- (3) The second condition is that—
  - (a) due to an error on the part of the Commissioners he is unable to use rebated heavy oil in those circumstances,
  - (b) he uses unrebated heavy oil instead in those circumstances, and
  - (c) the use occurs on or after the commencement day.
- (4) The Commissioners may pay to the person an amount equal to the rebate which would have been allowable under section 11 of the Hydrocarbon Oil Duties Act 1979 (c. 5) if—
  - (a) the heavy oil used by him in those circumstances had (at the time of that use) been delivered for home use, and
  - (b) the other conditions for allowing rebate had been satisfied at that time.
- (5) Rebated heavy oil is heavy oil on whose delivery for home use a rebate has been allowed under section 11 of the Hydrocarbon Oil Duties Act 1979, and unrebated heavy oil is other heavy oil.

### *Claims*

- 3 No payment may be made to a person under this Part of this Schedule unless—
  - (a) he makes a claim in such form and manner, and containing such matters, as the Commissioners may prescribe by regulations, and
  - (b) he satisfies such other conditions as the Commissioners may impose by regulations.

## **PART 2**

### INTEREST

#### *Commissioners' delay*

- 4 (1) This paragraph applies if—
  - (a) a person is entitled to obtain an amount by way of repayment or drawback in respect of excise duty paid to the Commissioners,
  - (b) on or after the commencement day he makes a claim for the repayment or drawback, and
  - (c) the Commissioners fail to authorise it within the allowable period.
- (2) The Commissioners must pay interest to the person on the amount for the applicable period.
- (3) The allowable period is the period of 30 days starting with the day on which the Commissioners receive the claim.
- (4) The applicable period is the period which—
  - (a) starts with the day after the allowable period ends, and
  - (b) ends with the day when the Commissioners authorise the repayment or drawback.

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- (5) Sub-paragraph (4) is subject to paragraph 6.
- 5 (1) This paragraph applies if—
- (a) a person is entitled to obtain an amount by way of repayment or drawback in respect of excise duty paid to the Commissioners,
  - (b) on or after the commencement day he makes a claim for the repayment or drawback,
  - (c) the Commissioners set off the amount against an assessment,
  - (d) the assessment is withdrawn, and
  - (e) the Commissioners authorise the repayment or drawback.
- (2) The Commissioners must pay interest to the person on the amount for the applicable period.
- (3) The applicable period is the period which—
- (a) starts with the earlier of the days referred to in sub-paragraph (4), and
  - (b) ends with the day when the Commissioners authorise the repayment or drawback.
- (4) The days are—
- (a) the day the amount is set off;
  - (b) the day after the end of the period of 30 days starting with the day on which the Commissioners receive the claim.
- (5) Sub-paragraphs (3) and (4) are subject to paragraph 6.
- 6 (1) In deciding the applicable period for the purposes of paragraphs 4 and 5 any period by which the Commissioners' authorisation of the repayment or drawback is delayed by circumstances beyond their control must be ignored.
- (2) In applying sub-paragraph (1) account must be taken in particular of any period referable to—
- (a) any failure by any person to provide the Commissioners with information requested by them to enable the existence and amount of the claimant's entitlement to a repayment or drawback to be determined;
  - (b) the making (in connection with the claim for repayment or drawback) of a claim to anything to which the claimant is not entitled.
- (3) In deciding for the purposes of sub-paragraph (2)(a) whether a period of delay is referable to a failure by a person to provide information requested, the period mentioned in sub-paragraph (4) must be taken to be so referable (except so far as may be prescribed by the Commissioners by regulations).
- (4) The period is that which—
- (a) starts with the day when the Commissioners request the person to provide information they reasonably consider relevant to the matter to be determined, and
  - (b) ends with the earliest day when it would be reasonable for them to conclude that they have received a complete answer to their request or all they need to answer it, or to conclude that it is unnecessary for them to be provided with information in answer to their request.

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### *Commissioners' error*

- 7 (1) This paragraph applies if—
- (a) due to an error on the part of the Commissioners a person pays to them an amount by way of excise duty,
  - (b) the person is entitled to obtain repayment of the amount,
  - (c) he makes a claim (at any time) for the repayment and the Commissioners authorise it on or after the commencement day, and
  - (d) he makes a claim for interest under this paragraph before the end of the period of three years starting with the day when the Commissioners authorise the repayment.
- (2) The Commissioners must pay interest to the person on the amount concerned for the applicable period.
- (3) The applicable period is the period which—
- (a) starts with the day when the payment is received by the Commissioners, and
  - (b) ends with the day when they authorise repayment.
- (4) Sub-paragraph (3) is subject to paragraph 11.
- 8 (1) This paragraph applies if—
- (a) a person pays to the Commissioners an amount by way of excise duty,
  - (b) he is entitled to obtain an amount by way of repayment, remission, rebate or drawback in respect of the duty,
  - (c) due to an error on the part of the Commissioners he fails to claim the amount when he would (apart from the error) have done so,
  - (d) the person makes a claim (at any time) for the repayment, remission, rebate or drawback and the Commissioners authorise it on or after the commencement day, and
  - (e) he makes a claim for interest under this paragraph before the end of the period of three years starting with the day when the Commissioners authorise the repayment, remission, rebate or drawback.
- (2) The Commissioners must pay interest to the person on the amount concerned for the applicable period.
- (3) The applicable period is the period which—
- (a) starts with the day when (apart from the error) the Commissioners might reasonably have been expected to authorise repayment, remission, rebate or drawback, and
  - (b) ends with the day when they authorise it.
- (4) Sub-paragraph (3) is subject to paragraph 11.
- 9 (1) This paragraph applies if—
- (a) a person pays to the Commissioners an amount by way of excise duty,
  - (b) he is entitled to obtain an amount by way of repayment, remission, rebate or drawback in respect of the duty,
  - (c) he makes a claim (at any time) for the repayment, remission, rebate or drawback and the Commissioners authorise it,
  - (d) due to an error on the part of the Commissioners their authorisation is delayed,

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- (e) the Commissioners authorise the repayment, remission, rebate or drawback on or after the commencement day,
    - (f) neither paragraph 4 nor paragraph 5 applies in relation to the person, and
    - (g) the person makes a claim for interest under this paragraph before the end of the period of three years starting with the day when the Commissioners authorise the repayment, remission, rebate or drawback.
  - (2) The Commissioners must pay interest to the person on the amount concerned for the applicable period.
  - (3) The applicable period is the period which—
    - (a) starts with the day when (apart from the error) the Commissioners might reasonably have been expected to authorise repayment, remission, rebate or drawback, and
    - (b) ends with the day when they authorise it.
  - (4) Sub-paragraph (3) is subject to paragraph 11.
- 10
- (1) This paragraph applies if—
    - (a) a person makes a claim for a payment under paragraph 1 or 2 of this Schedule and the Commissioners authorise it, and
    - (b) he makes a claim for interest under this paragraph before the end of the period of three years starting with the day when the Commissioners authorise the payment.
  - (2) The Commissioners must pay interest to the person on the amount concerned for the applicable period.
  - (3) The applicable period is the period which—
    - (a) starts with the day when the second or third condition in paragraph 1 or the second condition in paragraph 2 (as the case may be) is satisfied in relation to that person, and
    - (b) ends with the day when the Commissioners authorise the payment under that paragraph.
  - (4) Sub-paragraph (3) is subject to paragraph 11.
- 11
- (1) In deciding the applicable period for the purposes of paragraphs 7 to 10 any period by which the Commissioners' authorisation of the repayment, remission, rebate, drawback or payment is delayed by circumstances beyond their control must be ignored.
  - (2) In applying sub-paragraph (1) account must be taken in particular of any period referable to—
    - (a) any unreasonable delay in claiming repayment, remission, rebate, drawback or payment;
    - (b) any failure by any person to provide the Commissioners with information requested by them to enable the existence and amount of a claimant's entitlement to repayment, remission, rebate, drawback, payment or interest to be determined;
    - (c) the making (in connection with the claim for repayment, remission, rebate, drawback or payment) of a claim to anything to which the claimant is not entitled.

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- (3) In deciding for the purposes of sub-paragraph (2)(b) whether a period of delay is referable to a failure by a person to provide information requested, the period mentioned in sub-paragraph (4) must be taken to be so referable (except so far as may be prescribed by the Commissioners by regulations).
- (4) The period is that which—
- (a) starts with the day when the Commissioners request the person to provide information they reasonably consider relevant to the matter to be determined, and
  - (b) ends with the earliest day when it would be reasonable for them to conclude that they have received a complete answer to their request or all they need to answer it, or to conclude that it is unnecessary for them to be provided with information in answer to their request.

#### *Claims*

- 12 (1) A claim for interest under a relevant paragraph must be made in such form and manner, and contain such matters, as the Commissioners may prescribe by regulations.
- (2) If a person makes a claim under a relevant paragraph for interest on an amount, he may not make a claim under another relevant paragraph for interest on that amount.
- (3) The relevant paragraphs are paragraphs 7 to 10.

#### *Rate of interest*

- 13 In the case of interest under this Part of this Schedule, the rate is that applicable under section 197 of the Finance Act 1996 (c. 8) (rates of interest).

### **PART 3**

#### **APPEALS**

- 14 (1) This paragraph applies if—
- (a) a person (the appellant) appeals to a tribunal under section 16 of the Finance Act 1994 (c. 9) in relation to an assessment to excise duty,
  - (b) the appellant pays, or gives cash security for, the whole or any part of that duty, and
  - (c) the tribunal finds that the whole or any part of the amount paid or secured is not due.
- (2) The Commissioners must repay to the appellant an amount equal to—
- (a) so much of the duty paid as is found not to be due, or
  - (b) so much of the cash security as relates to the duty found not to be due.
- (3) The Commissioners must pay interest to the appellant on the amount referred to in sub-paragraph (2) for the period which—
- (a) starts with the day when the duty is paid or the cash security is given, and
  - (b) ends with the day when the Commissioners authorise the repayment.
- (4) The rate of interest is—

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- (a) such rate as the tribunal determines, or
- (b) if it does not determine a rate, the rate applicable under section 197 of the Finance Act 1996.

(5) In this paragraph “cash security” means such adequate security as enables the Commissioners to place the amount in question on deposit.

## PART 4

### GENERAL

#### *Amendments*

15 In section 137A of the Customs and Excise Management Act 1979 (c. 2) (recovery of overpaid excise duty) insert after subsection (5)—

“(6) This section does not apply in a case where the Commissioners are—

- (a) entitled to pay an amount under Part 1 of Schedule 3 to the Finance Act 2001, or
- (b) required to repay an amount under Part 3 of that Schedule.”.

16 In section 16(9) of the Finance Act 1994 (c. 9) (matters which are not ancillary matters) for the words from “paragraph 9(e)” to the end substitute—

“the following paragraphs of Schedule 5—

- (a) paragraph 3(4);
- (b) paragraph 4(3);
- (c) paragraph 9(e);
- (d) paragraph 9A.”.

17 (1) Schedule 5 to the Finance Act 1994 (decisions subject to review and appeal) is amended as follows.

(2) In paragraph 3 (decisions about alcoholic liquor) insert after sub-paragraph (3)—

“(4) Any decision which—

- (a) is made under paragraph 1 of Schedule 3 to the Finance Act 2001, and
- (b) relates to the Alcoholic Liquor Duties Act 1979.”.

(3) In paragraph 4 (decisions about hydrocarbon oil) insert after sub-paragraph (2)—

“(3) Any decision which—

- (a) is made under paragraph 1 or 2 of Schedule 3 to the Finance Act 2001, and
- (b) relates to the Hydrocarbon Oil Duties Act 1979.”.

(4) After paragraph 9 insert—

#### “The Finance Act 2001

9A Any decision under or for the purposes of Part 2 of Schedule 3 to the Finance Act 2001 (interest).”.

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- 18 (1) Section 197(2) of the Finance Act 1996 (c. 8) (setting rates of interest) is amended as follows.
- (2) For paragraph (a) substitute—
- “(a) paragraph 7 of Schedule 6 to the Finance Act 1994 (interest payable to the Commissioners of Customs and Excise in connection with air passenger duty);”.
- (3) After paragraph (h) (which is inserted by section 49(2) of this Act) insert—
- “(i) Parts 2 and 3 of Schedule 3 to the Finance Act 2001 (interest payable on repayments etc.).”.
- 19 (1) Schedule 5 to the Finance Act 1997 (c. 16) (recovery of excess payments) is amended as follows.
- (2) In paragraph 14 (assessment for excessive repayment) at the end of sub-paragraph (3) (b) omit “or” and after sub-paragraph (3)(c) insert—
- “or
- (d) Part 1 of Schedule 3 to the Finance Act 2001 (payments made and rebates disallowed in error).”.
- (3) In paragraph 15 (assessment for overpayments of interest) omit sub-paragraph (2)(a), at the end of sub-paragraph (2)(b) omit “or”, and after sub-paragraph (2)(c) insert—
- “or
- (d) Part 2 of Schedule 3 to the Finance Act 2001 (interest).”.
- (4) In paragraph 19 (review of decisions and appeals) in sub-paragraph (1)(c) for “the relevant interest provision is paragraph 9 of Schedule 6 to the Finance Act 1994” substitute “ Part 1 of Schedule 3 to the Finance Act 2001 or the relevant interest provision is Part 2 of that Schedule ”.
- (5) In paragraph 20 (interpretation of Part 5) in sub-paragraph (2)(a)(ii) for “paragraph 9 of Schedule 6 to the Finance Act 1994” substitute “ Part 2 of Schedule 3 to the Finance Act 2001 ”.
- 20 In Schedule 6 to the Finance Act 1994 (c. 9), paragraphs 9 and 10 (interest in relation to air passenger duty) are omitted.

### *General*

- 21 (1) This Schedule shall come into force in accordance with provision made by the Commissioners by order.
- (2) A reference in a provision of this Schedule to the commencement day is to such day as the Commissioners appoint by such order for the purposes of that provision.

#### **Subordinate Legislation Made**

**PI** Sch. 3 para. 21(1) power fully exercised: 1.11.2001 appointed by S.I. 2001/3300, art. 2 (with art. 3)

- 22 (1) A power to make an order or regulations under this Schedule is exercisable by statutory instrument.



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- (2) An order or regulations under this Schedule—
    - (a) may make different provision for different purposes;
    - (b) may make incidental, supplemental, saving or transitional provision.
  - (3) Regulations under this Schedule are subject to annulment in pursuance of a resolution of either House of Parliament.
- 23       References in this Schedule to the Commissioners are to the Commissioners of Customs and Excise.

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